

ORDINANCE 122496

AN ORDINANCE relating to historic preservation, amending Seattle Municipal Code sections 25.12.520, 25.12.560, 25.12.570, 25.12.610, 25.12.620, 25.12.630 and 25.12.640 to change the Hearing Examiner and Council process for approving controls and incentives for designated Seattle landmarks.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 25.12.520 of the Seattle Municipal Code, as last amended by Ordinance 118012, is amended as follows:

25.12.520 Effect of failure to agree or disapproval of agreement.

In the event the Board staff and the owner are unable to reach an agreement, or the agreement reached is disapproved by the Board, the Board shall file its recommendation on controls and incentives((;)) with the Hearing Examiner and the City Clerk, serve it on the owner, and mail a copy to interested persons of record. The controls proposed in such recommendation shall relate to the specific feature or features of the site, improvement or object which are identified in the Board's report on designation. The recommendation shall set forth the reasons for the proposed controls and for any proposed incentives. The recommendation shall, in addition, state the circumstances under which a certificate of approval shall be required with respect to any alteration or significant change to the site, improvement or object if the proposed controls are imposed.

Section 2. Section 25.12.560 of the Seattle Municipal Code, as last amended by Ordinance 118012, is amended as follows:

25.12.560. Hearing Examiner procedure.

A. Proceedings before the Hearing Examiner shall be in accordance with the procedures for hearings in contested cases pursuant to the Administrative Code, Chapter 3.02 of the Seattle



1 Municipal Code, and the Hearing Examiner's Rules of Practice and Procedure in effect at the
2 time of the proceeding, except as such procedures are modified in this chapter.

3 B. The Board's recommendation on proposed controls and incentives must be
4 supported by applicable law and substantial evidence in the record. The appellant bears the
5 burden of proving that the Board's recommendation should be rejected or modified.

6
7 Section 3. Section 25.12.570 of the Seattle Municipal Code, as enacted by Ordinance
8 106348, is amended as follows:

9 **25.12.570 Basis for Hearing Examiner's recommendation.**

10 On the basis of all the evidence presented at a hearing, the Hearing Examiner shall
11 determine whether to recommend, accept, reject or modify all or any of the proposed controls
12 and economic incentives recommended by the Board, and/or whether to recommend a modified
13 version of any of the proposed controls or incentives. ~~((The Hearing Examiner, except upon~~
14 ~~written agreement with the owner, shall not recommend any control which directly regulates~~
15 ~~population density; provided that the Hearing Examiner may recommend a control which~~
16 ~~indirectly affects density by controlling a specific feature of a site, improvement or object.))~~ The
17 Hearing Examiner shall not recommend any control which is ~~((not set forth with adequate~~
18 ~~specificity, or which is))~~ inconsistent with any provision of this chapter, ~~((or for which the reason~~
19 ~~and need is not established with respect to the specific features and characteristics of the site,~~
20 ~~improvement or object to be preserved,))~~ or which requires that the site, improvement or object
21 be devoted to any particular use, or which imposes any use restrictions, or any control or
22 incentive if the effect of such control, incentive or combination thereof would be to prevent the
23 owner from realizing a reasonable return on the site, improvement, or object.
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Section 4. Section 25.12.610 of the Seattle Municipal Code, as last amended by ordinance 118012, is amended as follows:

25.12.610 Hearing Examiner recommendations -- Referral to Council.

Within ~~((thirty (30)))~~ fifteen (15) days after the ~~((hearing))~~ close of the record, the Hearing Examiner shall serve on the Board ~~((and))~~, the owner and any other parties of record, and file with the ~~((Council))~~ City Clerk a decision setting forth a recommendation of proposed controls and incentives, and the reasons for the controls and incentives recommended.

Section 5. Section 25.12.620 of the Seattle Municipal Code, as last amended by Ordinance 118012, is amended as follows:

25.12.620 Right of appeal to Council.

Any party of record before the Hearing Examiner may appeal the recommendations of the Hearing Examiner regarding controls and incentives to the Council by filing with the ~~((Council))~~ City Clerk and serving on all other parties of record a written notice of appeal within ~~((thirty (30)))~~ fourteen (14) days after the Hearing Examiner's decision is served on the party appealing.

Section 6. Section 25.12.630 of the Seattle Municipal Code, as last amended by Ordinance 118012, is amended as follows:

25.12.630 Procedure on appeal to Council.

* * *

C. Standard of review. The Council's decision on the appeal must be supported by applicable law and substantial evidence in the record. The appellant bears the burden of proving that the Hearing Examiner's recommendation should be rejected or modified.

Section 7. Section 25.12.640 of the Seattle Municipal Code, as last amended by ordinance 118012, is amended as follows:

25.12.640 Council action on appeal.

* * *

B. ~~((Council action is necessary to complete the process for designation of a landmark. The Council may:))~~ On appeal, Council action shall be as follows:

~~1. Enact a designating ordinance that specifies the controls and incentives being imposed on a site, improvement, or object approved for designation by the Board;~~

~~2. Modify controls and incentives negotiated by the owner and the Board or recommended by the Board or the Hearing Examiner, and enact a designating ordinance embodying such modifications; or~~

~~3. Decide not to enact a designating ordinance and thereby decline to impose controls and incentives. A council decision not to enact a designating ordinance shall terminate the proceedings pursuant to Section 25.12.850 of this chapter.))~~

1. If the Council affirms a Hearing Examiner recommendation specifying controls and incentives to be placed on a site, improvement or object, the Council shall enact an ordinance containing those controls and incentives;

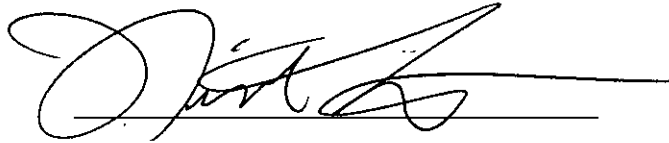
2. If the Council modifies the controls and/or incentives, the Council shall enact an ordinance that contains the controls and incentives as modified by the Council; or,

3. If the Council affirms the Hearing Examiner's rejection of Board-recommended controls and incentives, or rejects the Hearing Examiner's recommendation for controls and incentives, the Council shall enact an ordinance without controls and incentives. A Council

decision to enact an ordinance without controls and incentives shall terminate the proceedings pursuant to Section 25.12.850 of this chapter.

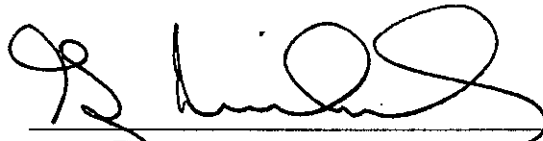
Section 8. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 17th day of September, 2007, and signed by me in open session in authentication of its passage this 17th day of September, 2007.



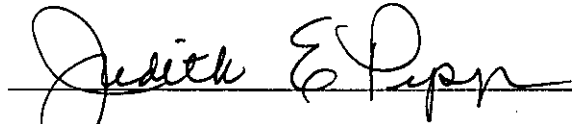
President _____ of the City Council

Approved by me this 21st day of September, 2007.



Gregory J. Nickels, Mayor

Filed by me this 27th day of September, 2007.



City Clerk

(Seal)

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Legislative	Rebecca Herzfeld	N/A

Legislation Title:

AN ORDINANCE relating to historic preservation, amending Seattle Municipal Code sections 25.12.520, 25.12.560, 25.12.570, 25.12.610, 25.12.620, 25.12.630 and 25.12.640 to change the Hearing Examiner and Council process for approving controls and incentives for designated Seattle landmarks.

- **Summary of the Legislation:**

The legislation is designed to clarify quasi-judicial decision making for the Council on controls and incentives affecting landmark structures, by providing specific standards for these decisions. Additional revisions are proposed that support changes proposed to Council's quasi-judicial rules that are used for these actions.

- **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

This Council-generated legislation is designed to implement quasi-judicial decision-making code changes supported through the Council's quasi-judicial rules. This legislation implements part of Council's work plan for 2007.

- *Please check one of the following:*

X **This legislation does not have any financial implications.** *(Stop here and delete the remainder of this document prior to saving and printing.)*

ORDINANCE _____

AN ORDINANCE relating to historic preservation, amending Seattle Municipal Code sections 25.12.520, 25.12.560, 25.12.570, 25.12.610, 25.12.620, 25.12.630 and 25.12.640 to change the Hearing Examiner and Council process for approving controls and incentives for designated Seattle landmarks.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 25.12.520 of the Seattle Municipal Code, as last amended by Ordinance 118012, is amended as follows:

25.12.520 Effect of failure to agree or disapproval of agreement.

In the event the Board staff and the owner are unable to reach an agreement, or the agreement reached is disapproved by the Board, the Board shall file its recommendation on controls and incentives((;)) with the Hearing Examiner and the City Clerk, serve it on the owner, and mail a copy to interested persons of record. The controls proposed in such recommendation shall relate to the specific feature or features of the site, improvement or object which are identified in the Board's report on designation. The recommendation shall set forth the reasons for the proposed controls and for any proposed incentives. The recommendation shall, in addition, state the circumstances under which a certificate of approval shall be required with respect to any alteration or significant change to the site, improvement or object if the proposed controls are imposed.

Section 2. Section 25.12.560 of the Seattle Municipal Code, as last amended by Ordinance 118012, is amended as follows:

25.12.560. Hearing Examiner procedure.

A. Proceedings before the Hearing Examiner shall be in accordance with the procedures for hearings in contested cases pursuant to the Administrative Code, Chapter 3.02 of the Seattle

1 Municipal Code, and the Hearing Examiner's Rules of Practice and Procedure in effect at the
2 time of the proceeding, except as such procedures are modified in this chapter.

3 B. The Board's recommendation on proposed controls and incentives may be
4 rejected or modified only if the Hearing Examiner finds that the Board's recommendation is
5 clearly erroneous.

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7 Section 3. Section 25.12.570 of the Seattle Municipal Code, as enacted by Ordinance
8 106348, is amended as follows:

9 **25.12.570 Basis for Hearing Examiner's recommendation.**

10 On the basis of all the evidence presented at a hearing, the Hearing Examiner shall
11 determine whether to recommend, accept, reject or modify all or any of the proposed controls
12 and economic incentives recommended by the Board, and/or whether to recommend a modified
13 version of any of the proposed controls or incentives. ~~((The Hearing Examiner, except upon~~
14 ~~written agreement with the owner, shall not recommend any control which directly regulates~~
15 ~~population density; provided that the Hearing Examiner may recommend a control which~~
16 ~~indirectly affects density by controlling a specific feature of a site, improvement or object.))~~ The
17 Hearing Examiner shall not recommend any control which is ~~((not set forth with adequate~~
18 ~~specificity, or which is))~~ inconsistent with any provision of this chapter, ~~((or for which the reason~~
19 ~~and need is not established with respect to the specific features and characteristics of the site,~~
20 ~~improvement or object to be preserved,))~~ or which requires that the site, improvement or object
21 be devoted to any particular use, or which imposes any use restrictions, or any control or
22 incentive if the effect of such control, incentive or combination thereof would be to prevent the
23 owner from realizing a reasonable return on the site, improvement, or object.
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1 Section 4. Section 25.12.610 of the Seattle Municipal Code, as last amended by
2 ordinance 118012, is amended as follows:

3 **25.12.610 Hearing Examiner recommendations -- Referral to Council.**

4 Within ~~((thirty-(30)))~~ fifteen (15) days after the ~~((hearing))~~ close of the record, the
5 Hearing Examiner shall serve on the Board ~~((and))~~, the owner and any other parties of record,
6 and file with the ~~((Council))~~ City Clerk a decision setting forth a recommendation of proposed
7 controls and incentives, and the reasons for the controls and incentives recommended.
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10 Section 5. Section 25.12.620 of the Seattle Municipal Code, as last amended by
11 Ordinance 118012, is amended as follows:

12 **25.12.620 Right of appeal to Council.**

13 Any party of record before the Hearing Examiner may appeal the recommendations of
14 the Hearing Examiner regarding controls and incentives to the Council by filing with the
15 ~~((Council))~~ City Clerk and serving on all other parties of record a written notice of appeal within
16 ~~((thirty-(30)))~~ fourteen (14) days after the Hearing Examiner's decision is served on the party
17 appealing.
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21 Section 6. Section 25.12.630 of the Seattle Municipal Code, as last amended by
22 Ordinance 118012, is amended as follows:

23 **25.12.630 Procedure on appeal to Council.**

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25 C. Standard of review. Unless some other standard review is specified by ordinance,
26 statute or case law the Council will approve the Hearing Examiner's decision setting forth
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recommendations unless the Council is left with the definite and firm conviction that the Hearing

Examiner erred.

Section 7. Section 25.12.640 of the Seattle Municipal Code, as last amended by ordinance 118012, is amended as follows:

25.12.640 Council action on appeal.

* * *

B. Council action is necessary to complete the process for designation of a landmark((-)), as follows: ~~((The Council may:~~

~~1. Enact a designating ordinance that specifies the controls and incentives being imposed on a site, improvement, or object approved for designation by the Board;~~

~~2. Modify controls and incentives negotiated by the owner and the Board or recommended by the Board or the Hearing Examiner, and enact a designating ordinance embodying such modifications; or~~

~~3. Decide not to enact a designating ordinance and thereby decline to impose controls and incentives. A council decision not to enact a designating ordinance shall terminate the proceedings pursuant to Section 25.12.850 of this chapter.))~~

1. If the Council affirms a Hearing Examiner recommendation specifying controls and incentives to be placed on a site, improvement or object, the Council shall enact a designating ordinance containing those controls and incentives;

2. If the Council modifies the controls and/or incentives based on its determination that the Hearing Examiner's recommendation was erroneous, the designating ordinance shall contain the controls and incentives as modified by the Council; or

3. If the Council affirms the Hearing Examiner's rejection of Board-recommended controls and incentives, or determines that the Hearing Examiner's recommendation for controls and incentives was erroneous, the Council shall enact a designating ordinance without controls and incentives.

Section 8. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2007, and signed by me in open session in authentication of its passage this ____ day of _____, 2007.

President _____ of the City Council

Approved by me this ____ day of _____, 2007.

Gregory J. Nickels, Mayor

Filed by me this ____ day of _____, 2007.

City Clerk

(Seal)

STATE OF WASHINGTON – KING COUNTY

--SS.

216019
CITY OF SEATTLE, CLERKS OFFICE

No.

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORDINANCE 122496

was published on

10/02/07

The amount of the fee charged for the foregoing publication is the sum of \$ 279.00, which amount has been paid in full.



Samuel Oglesby

Subscribed and sworn to before me on
10/02/07 *James R. Ray*

Notary public for the State of Washington,
residing in Seattle

City of Seattle

ORDINANCE 122496

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B. The Board's recommendation on proposed controls and incentives must be supported by applicable law and substantial evidence in the record. The appellant bears the burden of proving that the Board's recommendation should be rejected or modified.

Section 3. Section 25.12.570 of the Seattle Municipal Code, as enacted by Ordinance 106348, is amended as follows:

25.12.570 Basis for Hearing Examiner's recommendation.

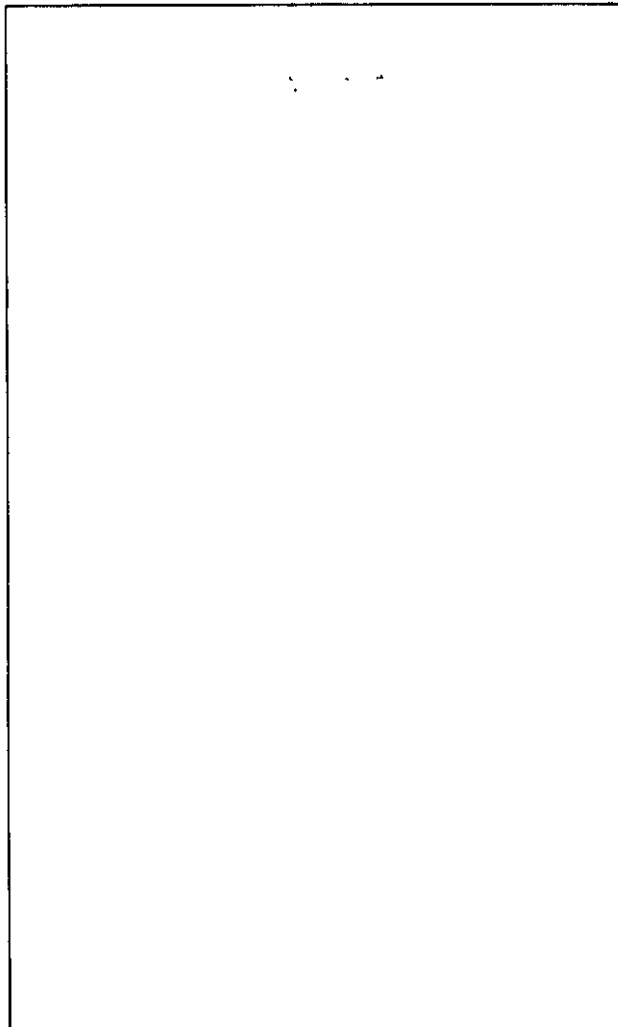
On the basis of all the evidence presented at a hearing, the Hearing Examiner shall determine whether to recommend, accept, reject or modify all or any of the proposed controls and economic incentives recommended by the Board, and/or whether to recommend a modified version of any of the proposed controls or incentives. ((The Hearing Examiner, except upon written agreement with the owner, shall not recommend any control which directly regulates population density; provided that the Hearing Examiner may recommend a control which indirectly affects density by controlling a specific feature of a site, improvement or object.)) The Hearing Examiner shall not recommend any control which is ((not set forth with adequate specificity, or which is)) inconsistent with any provision of this chapter, ((or for which the reason and need is not established with respect to the specific features and characteristics of the site, improvement or object to be preserved;)) or which requires that the site, improvement or object be devoted to any particular use, or which imposes any use restrictions, or any control or incentive if the effect of such control, incentive or combination thereof would be to prevent the owner from realizing a reasonable return on the site, improvement, or object.

Section 4. Section 25.12.610 of the Seattle Municipal Code, as last amended by ordinance 118012, is amended as follows:

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State of Washington, King County



Page 2 of affidavit

Section 5. Section 25.12.620 of the Seattle Municipal Code, as last amended by Ordinance 118012, is amended as follows:

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Any party of record before the Hearing Examiner may appeal the recommendations of the Hearing Examiner regarding controls and incentives to the Council by filing with the ((Council)) City Clerk and serving on all other parties of record a written notice of appeal within ((thirty (30))) fourteen (14) days after the Hearing Examiner's decision is served on the party appealing.

Section 6. Section 25.12.630 of the Seattle Municipal Code, as last amended by Ordinance 118012, is amended as follows:

25.12.630 Procedure on appeal to Council.

...

C. Standard of review. The Council's decision on the appeal must be supported by applicable law and substantial evidence in the record. The appellant bears the burden of proving that the Hearing Examiner's recommendation should be rejected or modified.

Section 7. Section 25.12.640 of the Seattle Municipal Code, as last amended by ordinance 118012, is amended as follows:

25.12.640 Council action on appeal.

...

B. ((Council action is necessary to complete the process for designation of a landmark. The Council may:)) On appeal, Council action shall be as follows:

1- Enact a designating ordinance that specifies the controls and incentives being imposed on a site, improvement, or object approved for designation by the Board;

2- Modify controls and incentives negotiated by the owner and the Board or recommended by the Board or the Hearing Examiner, and enact a designating ordinance embodying such modifications; or

3- Decide not to enact a designating ordinance and thereby decline to impose controls and incentives. A council decision not to enact a designating ordinance shall terminate the proceedings pursuant to Section 25.12.850 of this chapter.))

1. If the Council affirms a Hearing Examiner recommendation specifying controls and incentives to be placed on a site, improvement or object, the Council shall enact an ordinance containing those controls and incentives;

2. If the Council modifies the controls and/or incentives, the Council shall enact an ordinance that contains the controls and incentives as modified by the Council; or

3. If the Council affirms the Hearing Examiner's rejection of Board-recommended controls and incentives, or rejects the Hearing Examiner's recommendation for controls and incentives, the Council shall enact an ordinance without controls and incentives. A Council decision to enact an ordinance without controls and incentives shall terminate the proceedings pursuant to Section 25.12.850 of this chapter.

Section 8. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 17th day of September, 2007, and signed by me in open session in authentication of its passage this 17th day of September, 2007.

NICK LICATA,

President of the City Council.

Approved by me this 21st day of September, 2007.

GREGORY J. NICKELS,

Mayor.

Filed by me this 27th day of September, 2007.

(Seal) JUDITH E. PIPPIN,

City Clerk.

Publication ordered by JUDITH PIPPIN, City Clerk.

Date of publication in the Seattle Daily Journal of Commerce, October 2, 2007.

10/2(216019)